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Deliberations

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

11-CR-424 (NRB)

5 GULAY CIBIK, REFAEL BRODJIK,
6 a/k/a "Rafi," NATHAN SCHWARTZ,
7 HAROLD TISCHLER, a/k/a
"Hershy,"

8 Defendants.

Jury Trial

-----x

9
10 New York, N.Y.
February 5, 2013
11 9:18 a.m.

12 Before:

13 HON. NAOMI REICE BUCHWALD,

14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
Southern District of New York

18 JANIS ECHENBERG

JAMES J. PASTORE, JR.

19 Assistant United States Attorneys

MICHAEL DINET, Paralegal Specialist

20 DONALDSON CHILLIEST LLP

21 Attorneys for Defendant Gulay Cibik

22 BY: XAVIER R. DONALDSON, ESQ.

LAWRENCE D. GERZOG, ESQ.

23 JEREMY L. GUTMAN, ESQ.

24 Attorneys for Defendant Refeal Brodjik

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APPEARANCES
(Continued)

BRILL LEGAL GROUP, P.C.

Attorneys for Defendant Nathan Schwartz

BY: PETER E. BRILL, ESQ.

PAUL GREENFIELD, ESQ.

Attorney for Defendant Harold Tischler

ALSO PRESENT: DEIDRE GORDON, Special Agent, Homeland Security
RYAN GIBBS, Special Agent, U.S. Dept. of Labor

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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: All right. I understand there is some
4 matters you want to raise.

5 MR. DONALDSON: No, your Honor.

6 MR. HERZOG: Yes, Judge. A couple of things.

7 In going over the exhibit list, I agreed to all but
8 one, I think, the descriptions of the exhibits. I gave Ms. --

9 THE COURT: Echenberg --

10 MR. HERZOG: -- Echenberg, thank you.

11 THE COURT: -- I have it written out --

12 MR. HERZOG: What I would like to say about -- one of
13 the exhibits, Brodjik's exhibit 1, is a photograph of Jed David
14 Philwin. And the significance of it was, is, that when they
15 showed it to Mr. Grynsztajn, he said he didn't know who it was,
16 maybe it was his brother, and --

17 THE COURT: Whose brother?

18 MR. HERZOG: Grynsztajn's brother.

19 THE COURT: Mr. Grynsztajn thought it was a picture of
20 his own brother.

21 MR. HERZOG: Apparently. And that was 11 days before
22 the trial started. I think it's not enough to just say photo
23 of Jed David Philwin, because --

24 THE COURT: No. No, no, no. This is a list of
25 exhibits, not a -- you know, a commentary.

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1 MR. HERZOG: All right. If that's the Court's ruling,
2 that is fine.

3 THE COURT: Okay.

4 MR. HERZOG: The second is that, yesterday, I was
5 asking Agent Gordon whether during Ms. Cibik's first statement
6 she mentioned Rafi Brodjik -- or, I'm sorry, in my summation I
7 was saying that Ms. Cibik did not mention Refael Brodjik.
8 There was an objection. And Mr. Pastore said: All I'll say is
9 Bruton.

10 Your Honor sustained the objection.

11 And I stopped talking.

12 I went back and looked at the Cibik proffers. And I
13 can't find any reference, anywhere, in anything Cibik ever said
14 about Mr. Brodjik. So I would think that that would make your
15 sustaining of the objection -- that that would influence your
16 thinking as to whether the objection was properly sustained.
17 And I would ask for an instruction to the jury that there was
18 nothing in the Cibik --

19 THE COURT: I think the -- well, I'll let the
20 government respond.

21 MR. PASTORE: Yes, your Honor.

22 First, I have to apologize, I confused Mr. Brodjik's
23 proffer with Ms. Cibik's proffer which, in some way, in some
24 sense, actually makes this a worse argument from Mr. Gerzog's
25 standpoint, I think.

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1 Mr. Brodjik said Abdullah knew, Gulay knew, and David
2 Grynsztajn, who had their own clients, would also give money to
3 Brodjik for David. So it's in Mr. Brodjik's proffer statement.
4 I think, yesterday, I misspoke and said it was in Ms. Cibik's
5 proffer statement. In the government's view, it makes it even
6 worse, because the protections were there.

7 As your Honor knows, we moved at the conclusion of
8 cross-examination by Mr. Gerzog when he stated that -- to Mr.
9 Salamon you didn't see Brodjik picking up money from Cibik
10 because that didn't happen, right? We moved to admit the
11 proffer statement. And I understand your Honor denied the
12 government's motion. But I think this is along the same lines
13 that, as your Honor said "it is not cricket" with Mr. Brodjik
14 saying they collected money from Ms. Cibik, and then suggesting
15 an argument that they never interacted.

16 MR. GUTMAN: I think we believe that is missing the
17 point completely.

18 THE COURT: Well, why don't we try it this way.

19 Let's assume that the agent was on the stand. Could
20 you have asked her, without creating a situation where you were
21 exposing Mr. Brodjik's proffer statement, questions about
22 whether some other person that she interviewed put Mr. Brodjik
23 at the scene?

24 MR. GUTMAN: I think so. And I think this goes --

25 THE COURT: After he admitted it? No, I don't think

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1 so, I really don't.

2 MR. GUTMAN: I believe based on that same case that I
3 cited during Mr. Donaldson's discussion on this, and, I'll look
4 it up again because I can't remember how to pronounce it, but
5 the Court of Appeals has made it clear as long as defense
6 counsel does not assert as truth a fact that is --

7 THE COURT: Look, the fact is, that during the trial,
8 the government really failed to press, as I recall it, the
9 issue about Mr. Brodjik's proffer. They raised it and kind of
10 dropped it. And I don't really recall ruling on it. And,
11 actually, I thought they had a pretty good argument, better
12 than the one that they had with respect to Mr. Donaldson.

13 So, you probably have a record that's in better shape,
14 given what happened, because I think you really have exposed
15 Mr. Brodjik's proffer. And had I been pressed on it, there was
16 a really good chance that it would have come in. So I think
17 you should be, on balance, content with the record as it is.

18 MR. GUTMAN: Your Honor, on -- I understand the
19 Court's position. We -- first of all, that didn't happen. Had
20 it happened, we would have argued about why --

21 THE COURT: Right, I --

22 MR. GUTMAN: -- why the government's position was
23 wrong.

24 But whatever the correct ruling might have been, I
25 think on summation, counsel is entitled and has an obligation,

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1 as he sees fit, to comment on the evidence that is before the
2 jury. And I think, you know, this goes back to this whole
3 idea, a trial isn't a search for the truth in the sense that if
4 the Court --

5 THE COURT: No, I fully understand it is not a search
6 for truth.

7 MR. GUTMAN: And that, for better or worse, that is
8 the law. And if the Court is aware of a confession that
9 someone made that's suppressed, that doesn't mean that because
10 that is there, but it's not before the jury, the defense can't
11 challenge the evidence and whether it proves beyond a
12 reasonable doubt the government's case.

13 THE COURT: Two things. One, there is nothing that
14 was suppressed here, which is a major difference.

15 Secondly, the fact remains that I did sustain the
16 objection. I was presented with a certain set of facts. I
17 don't pretend to have memorized the exhibits in this case. And
18 so as a consequence, by the time the government got up to do
19 their rebuttal, that was not something before the jury that
20 they could have responded to. So I think we're going to have
21 to live with it the way it happened.

22 All the -- look, you're all entitled -- and I take it
23 very seriously -- to a fair trial. But fair and perfect are
24 not the same things. I try to be perfect. Counsel tries. But
25 it's just like, you know, ineffective assistance of counsel is

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1 not against a perfection standard. It is a competence standard
2 and an overall fairness standard. It is what it is. And I
3 think there is -- and you may have had a ruling that went, you
4 know, against you, I think you wound up avoiding one -- well
5 excuse me, you may have had one ruling that went against you,
6 but you avoided a bigger one that I think would have gone
7 against you.

8 MR. PASTORE: And just for the record, the government
9 obviously concede that the Court's sustaining of the objection,
10 if presented and knowing that Mr. Brodjik had himself admitted
11 to contact with Cibik, and we would have still made the same
12 objection on the same grounds, and for same reasons. And we
13 would argument that it would have been appropriate to sustain
14 the objection.

15 THE COURT: I'm not saying you are wrong. I think I
16 agree with you. I was just saying that, you know, it would be
17 ideal if trials proceeded, at all times, at a pace that allowed
18 for briefing with 30-day gaps and, you know, time to fully
19 consider every possible way of looking at an issue. The
20 reality is trials proceed at a much more fast pace. And,
21 therefore, there is a certain level of forgiveness that is
22 accorded both the Court and counsel. We live with it. We do
23 our best. Everybody has tried, no one is suggesting, I
24 don't -- everybody has worked hard. And we, you know, demand a
25 lot of ourselves. We hold ourselves to a high standard, but it

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1 doesn't mean that we're perfect, even if we are --

2 MR. GUTMAN: And we're even less perfect. And we're
3 not suggesting any intent to do anything other than what the
4 Court believes is right and fair.

5 THE COURT: The point is, you can't get away with
6 something on summation that you really couldn't have gotten
7 away with, you know, in the course of the trial itself. It is
8 even worse because, you know, the summation is gonna be all of,
9 you know, an hour, an hour and a half.

10 It's a much harder situation to deal with corrections.
11 You have a trial and something happens. In this case, in week
12 two, we had all of the time, you know, in week three to fix it.
13 You don't call a witness back, come up with elaborate
14 instructions, all sorts of things. But in the midst of a
15 summation, that's very hard to create a solution if something,
16 you know, is improper.

17 So it would have been -- the scene of Mr. Gerzog
18 asking the agent during trial did Ms. Cibik mention
19 Mr. Brodjik, whoa, up to the sidebar. And I think we, you
20 know, would have known what the answer would be. No,
21 sustained. So he can't do it on summation what he couldn't
22 have done as a question and answer at trial.

23 MR. GUTMAN: Your Honor, we accept your ruling, but
24 just we stand by our request.

25 THE COURT: Okay. All right.

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1 MR. HERZOG: Finally, Judge, as you remember there was
2 a contretemps yesterday about Agent Gordon and 225 Second
3 Street, and whether there was a bakery there and so forth.

4 THE COURT: Also, the Israeli experience letter. That
5 was the first.

6 MR. HERZOG: But speaking of the bakery, specifically,
7 I have good reason to believe, on a definite good-faith basis
8 that there is a bakery there now. And there is also a report
9 in the discovery of an agent's investigation in which he went
10 to that spot, I believe in '06, and spoke to -- it was, at that
11 time, it was a Jewish bakery -- and spoke to the owners of the
12 Jewish bakery. And they said Mr. Flam doesn't own the bakery
13 now, but he used to own the bakery.

14 So there is a very real point that Mr. Flam owned a
15 Jewish bakery at Second Street in 2002, when Mrs. Brodjik sent
16 in her application. And you know, I was not playing any games.
17 These are all facts that I believe to be true. And I, again,
18 object respect respectfully to the fact that you somehow
19 described it as Brady material, that you somehow suggest that I
20 was inappropriate in saying what I said, and making the point I
21 made. I don't think I was.

22 I think it was perfectly acceptable for me to ask the
23 jury to think about why something was not testified to, and to
24 give them an -- now, I'm not -- again, I'm not saying that I
25 know that Agent Gordon did something wrong, I'm not saying that

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1 I even personally think she did something wrong. But it's not
2 about what I think, and what I personally feel. It is about
3 what my responsibilities are to Mr. Brodjik. And I think it
4 was entirely appropriate for me to make the statement, sum up
5 on that statement, et cetera.

6 THE COURT: The essence of defense summations in this
7 case, other than attacking the credibility of the two
8 cooperating witnesses, was a drumbeat of attacks on the
9 government's investigative techniques, or lack thereof.

10 I was silent, the Court was silent. This was -- my
11 reaction was the combination of your claim, which you are not
12 even today claiming the basis for, that the government, the
13 agent contacted the Israeli experience letter author and
14 learned that, either confirmed it or learned that, in fact, she
15 had the experience. If that were the case, the government had
16 a Brady obligation. And when we got to this second issue it
17 was the same kind of argument. It was not simply an argument
18 that the government could have gone to an address and confirmed
19 something and they failed to do it. It was a further
20 suggestion that they had done so, learned a bad fact, and
21 didn't disclose it. And the reaction was, had you just done
22 one, just like the first time, which I -- they have not gone
23 past me on the Israeli letter, you would have gotten no
24 reaction. But it was the second time, so.

25 MR. HERZOG: That's all I have.

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1 THE COURT: And there still is no basis, I think, for
2 you're saying that Agent Gordon went and did, you know, found
3 something which with she failed to disclose.

4 MR. HERZOG: I think what I said, Judge, was that
5 there was no testimony that Agent Gordon contacted the bakery.
6 And I think what I said was, why not. Did she forget to, did
7 she not think of it? Or was she afraid of finding out
8 something that she didn't want to know. I don't believe, I
9 don't have a transcript in front of me, but I don't believe I
10 said she contacted the bakery, and the bakery told her
11 something that she --

12 THE COURT: The Israeli thing was absolutely clear, so
13 I don't know what -- I don't have a --

14 MR. PASTORE: Judge, I have the transcript right here.
15 And we didn't object until the later part of this. So Mr.
16 Herzog is right, for first part, he says: Either an agent of
17 21 years forgot that it might be a good idea to go look at 225
18 Second Street. We didn't object to that point. But then he
19 adds: Or perhaps it means that she went and she looked and
20 didn't like what she saw as far as proving things to you, and
21 that is when there was the simultaneous --

22 MR. HERZOG: We are talking about the Israeli
23 experience letter.

24 MR. PASTORE: No, no, that's the bakery.

25 THE COURT: That's the bakery.

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1 MR. PASTORE: Right.

2 MR. HERZOG: Excuse me. Your Honor said that I said
3 that she called Isreal, and --

4 THE COURT: No, she didn't --

5 MR. HERZOG: I beg your pardon?

6 THE COURT: They'll read it to you.

7 Look, you know, there are two possibilities here.
8 Either you did realize what you were doing, and the Brady issue
9 that you raise, or you were pushing the line and there was a
10 reaction.

11 MR. HERZOG: It isn't -- with respect to the Israeli
12 experience letter, there is no Brady issue in saying either she
13 didn't -- either she forgot or chose not to call, or she didn't
14 call because she was afraid of what she might find out. Now
15 that's, with respect to the Israeli --

16 THE COURT: Well, the government will read what you
17 said.

18 MR. PASTORE: So it says: Didn't do it. Or, did and
19 got the answer they didn't want to hear, and didn't want to
20 tell you.

21 THE COURT: Okay.

22 MR. HERZOG: No, if that's --

23 MR. PASTORE: So the Court's recollection is --

24 MR. HERZOG: If that's what it says, then --

25 THE COURT: Argument over.

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1 Look, you know and I know that you have gotten many
2 favorable rulings on issues far more important than a line in
3 your summation about the government's investigative techniques.
4 You got changes in the charge that were significant to you.
5 You got, through my, in effect, good offices, the government to
6 tell you in advance of your summation, exactly what they were
7 going to be arguing with the false statements. Those things
8 are really important. This is a blip along with other, you
9 know, objection sustained, not sustained, some perfect, some
10 not perfect. There was no question I believe I was totally
11 correct. But when you, you know, push the envelope, sometimes
12 you get a reaction.

13 MR. HERZOG: We have your ruling. Thank you, your
14 Honor.

15 THE COURT: Okay. All right, so they're back at work.
16 We'll stay tuned. I think at least yesterday my description to
17 them of what happens when they send a note did somewhat reduce,
18 you know, what I was afraid was gonna be one every 15 minutes,
19 so.

20 MR. PASTORE: On a logistical point, Judge, once we
21 complete the exhibit list --

22 THE COURT: Right.

23 MR. PASTORE: -- should we have provide it to your law
24 clerk in order to provide it to the marshal to go to the jury?

25 THE COURT: That's fine, that works.

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1 MR. PASTORE: Is everyone comfortable with that?

2 MR. DONALDSON: Yes.

3 MR. GUTMAN: Of course.

4 MR. HERZOG: Yes.

5 THE COURT: Sounds good.

6 MR. PASTORE: Thank you, Judge.

7 (Recess)

8 (Continued on next page)

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Verdict

1 (2:29 p.m.)

2 THE COURT: At 2:12, we received the following note:
3 Your Honor, we the jury have reached a verdict on all
4 counts.

5 Signed by the foreperson.

6 So we're going to bring them in.

7 I just would request that everybody remain silent
8 through the reading of the verdict; okay?

9 THE DEPUTY CLERK: All rise.

10 (Jury present)

11 THE COURT: Good afternoon, everyone.

12 THE DEPUTY CLERK: Will the jurors please answer
13 present when your name is called.

14 Juror number one, Paul Frisch.

15 THE JUROR: Present.

16 THE DEPUTY CLERK: Juror number two, Vito Gironda.

17 THE JUROR: Present.

18 THE DEPUTY CLERK: Juror number three, Saul Diaz.

19 THE JUROR: Present.

20 THE DEPUTY CLERK: Juror number four, Susan Otto-Peek.

21 THE JUROR: Present.

22 THE DEPUTY CLERK: Juror number five, Laura Mayer.

23 THE JUROR: Present.

24 THE DEPUTY CLERK: Juror number six, Roya Shojai.

25 THE JUROR: Present. Juror number seven, Norma

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1 Goldstein.

2 THE DEPUTY CLERK: Juror number eight, Sindia Massas
3 Cuenca.

4 THE JUROR: Present.

5 THE DEPUTY CLERK: Juror number nine, Jessica Rodwick.

6 THE JUROR: Present.

7 THE DEPUTY CLERK: Juror number 10, Rosemary Romeo.

8 THE JUROR: Present.

9 THE DEPUTY CLERK: Juror number 11, Louis Rivera.

10 THE JUROR: Here.

11 THE DEPUTY CLERK: Juror number 12, Paulette Damiano.

12 THE JUROR: Present.

13 THE DEPUTY CLERK: Will the foreperson please rise.

14 Has the jury agreed upon a verdict?

15 THE FOREPERSON: Yes.

16 THE DEPUTY CLERK: Do you find that the government has
17 proven beyond a reasonable doubt that the defendant, Gulay
18 Cibik is guilty of conspiring to commit visa fraud or to make
19 false statements to the United States government, as charged in
20 count one of the indictment; guilty or not guilty?

21 THE FOREPERSON: Guilty.

22 THE DEPUTY CLERK: Do you find that the government has
23 proven beyond a reasonable doubt that the defendant, Refael
24 Brodjik is guilty of conspiring to commit visa fraud or to make
25 false statements to the United States government as charged in

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1 count one of the indictment; guilty or not guilty?

2 THE FOREPERSON: Guilty.

3 THE DEPUTY CLERK: Do you find that government has
4 proven beyond a reasonable doubt that the defendant, Nathan
5 Schwartz, is guilty of conspiring to commit visa fraud or to
6 make false statements to the United States government as
7 charged in count one of the indictment; guilty or not guilty?

8 THE FOREPERSON: Guilty.

9 THE DEPUTY CLERK: Do you find that the government has
10 proven beyond a reasonable doubt that the defendant, Harold
11 Tischler, is guilty of conspiring to commit visa fraud or to
12 make false statements to the United States government as
13 charged in count one of the indictment; guilty or not guilty?

14 THE FOREPERSON: Guilty.

15 THE DEPUTY CLERK: Do you find that the government has
16 proven beyond a reasonable doubt that the defendant, Gulay
17 Cibik is guilty of having committed visa fraud as charged in
18 count two of the indictment; guilty or not guilty?

19 THE FOREPERSON: Guilty.

20 THE DEPUTY CLERK: Do you find that the government has
21 proven beyond a reasonable doubt that the defendant, Refael
22 Brodjik is guilty of having committed visa fraud as charged in
23 count three of the indictment; guilty or not guilty?

24 THE FOREPERSON: Guilty.

25 THE DEPUTY CLERK: Do you find that the government has

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1 proven beyond a reasonable doubt that the defendant, Refael
2 Brodjik, is guilty of having made false statements in a
3 naturalization proceeding as charged in count four of the
4 indictment; guilty or not guilty?

5 THE FOREPERSON: Guilty.

6 THE DEPUTY CLERK: Do you find that the government has
7 proven, beyond a reasonable doubt, that the defendant, Nathan
8 Schwartz, is guilty of having committed visa fraud as charged
9 in count five of the indictment; guilty or not guilty?

10 THE FOREPERSON: Guilty.

11 THE DEPUTY CLERK: Do you find that government has
12 proven beyond a reasonable doubt that the defendant, Harold
13 Tischler, is guilty of having committed visa fraud as charged
14 in count six of the indictment; guilty or not guilty?

15 THE FOREPERSON: Guilty.

16 THE DEPUTY CLERK: Ladies and gentlemen of the jury,
17 listen to your verdict as it stands recorded.

18 Do you find that the government has proven beyond a
19 reasonable doubt that the defendant, Gulay Cibik is guilty of
20 conspiring to commit visa fraud, or to make false statements to
21 the United States government as charged in count one of the
22 indictment; guilty.

23 Do you find that the government has proven beyond a
24 reasonable doubt, that the defendant, Refael Brodjik, is guilty
25 of conspiring to commit visa fraud or to make false statements

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1 to United States government as charged in count one of the
2 indictment; guilty.

3 Do you find that the government has proven beyond a
4 reasonable doubt that the defendant, Nathan Schwartz, is guilty
5 of conspiring to commit visa fraud or to make false statements
6 to the United States government as charged in count one of the
7 indictment; guilty.

8 Do you find that the government has proven beyond a
9 reasonable doubt that the defendant, Harold Tischler, is guilty
10 of conspiring to commit visa fraud, or to make false statements
11 to the United States government as charged in count one of the
12 indictment; guilty.

13 Do you find that the government has proven beyond a
14 reasonable doubt that the defendant, Gulay Cibik, is guilty of
15 having committed visa fraud as charged in count two of the
16 indictment; guilty.

17 Do you find that the government has proven beyond a
18 reasonable doubt that the defendant, Refael Brodjik, is guilty
19 of having committed visa fraud as charged in count three of the
20 indictment; guilty.

21 Do you find that the government has proven beyond a
22 reasonable doubt that the defendant, Refael Brodjik, is guilty
23 of having made false statements in a naturalization proceeding
24 as charged in count four of the indictment; guilty.

25 Do you find that the government has proven beyond a

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1 reasonable doubt that the defendant, Nathan Schwartz, is guilty
2 of having committed visa fraud as charged in count five of the
3 indictment; guilty.

4 Do you find that the government has proven, beyond a
5 reasonable doubt, that the defendant, Harold Tischler, is
6 guilty of having committed visa fraud as charged in count six
7 of the indictment; guilty.

8 THE DEPUTY CLERK: Mr. Frisch, is that the jury's
9 verdict?

10 THE FOREPERSON: Yes.

11 THE DEPUTY CLERK: Mr. Frisch, is that your verdict?

12 THE FOREPERSON: Yes.

13 THE DEPUTY CLERK: Mr. Girona, is that your verdict?

14 THE JUROR: Yes.

15 THE DEPUTY CLERK: Mr. Diaz, is that your verdict?

16 THE JUROR: Yes.

17 THE DEPUTY CLERK: Ms. Otto-Peek; is that your
18 verdict?

19 THE JUROR: Yes.

20 THE DEPUTY CLERK: Ms. Mayer; is that your verdict?

21 THE JUROR: Yes.

22 THE DEPUTY CLERK: Ms. Shojai; is that your verdict?

23 THE JUROR: Yes.

24 THE DEPUTY CLERK: Ms. Goldstein, is that your
25 verdict?

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1 THE JUROR: Yes.

2 THE DEPUTY CLERK: Ms. Massas Cuenca, is that your
3 verdict?

4 THE JUROR: Yes.

5 THE DEPUTY CLERK: Ms. Rodwick, is that your verdict?

6 THE JUROR: Yes.

7 THE DEPUTY CLERK: Ms. Romeo, is that your verdict?

8 THE JUROR: Yes.

9 THE DEPUTY CLERK: Mr. Rivera, is that your verdict?

10 THE JUROR: Yes.

11 THE DEPUTY CLERK: Ms. Damiano; is that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Finally, counsel, is there any reason we
14 need keep the jury any further?

15 MR. PASTORE: Nothing from the government.

16 MR. GUTMAN: No, your Honor.

17 MR. DONALDSON: No, your Honor.

18 THE COURT: Let me thank you, once again, as I have
19 indicated yesterday, we thank you for your service. It is not
20 the custom of the Court to thank you for your specific verdict.
21 And I do apologize, once again, that your service lasted longer
22 than I had anticipated. You were very good sports about it.
23 And I thank you on behalf of the entire court.

24 You were a terrific jury, really. You know, you got
25 here on time, and paid spectacular attention throughout the

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Verdict

1 trial, some of which I would say, candidly, is not the most
2 scintillating testimony I have ever heard, but you were
3 certainly totally alert. And, as I say, we thank you very much
4 for your service.

5 You are excused. Thanks.

6 THE COURT: Mr. Frisch, I just need that verdict form
7 from you.

8 THE DEPUTY CLERK: All rise.

9 (Jury excused)

10 (Continued on next page)

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Verdict

1 THE COURT: All right. Other than setting sentencing
2 dates, is there anything else we need to talk about at this
3 time?

4 MR. PASTORE: Yes, your Honor. With respect to the
5 bail conditions of the defendants, with respect to Nathan
6 Schwartz and Harold Tischler, at this time the government is
7 not seeking any adjustment to their bail conditions. We will
8 want to talk, in particular, to Mr. Schwartz' counsel, because
9 it has come to our attention allegations of additional fraud
10 committed by Mr. Schwartz since he has been out on bail. We
11 don't think remand is necessary at this time, but there may be
12 increasing conditions that we'll negotiate with Mr. Brill.

13 With respect to defendants Brodjik and Cibik, we are
14 seeking remand at this time based on risk of flight. With
15 respect to Mr. Brodjik, I'm happy to lay out the reasons --

16 THE COURT: First of all since, I didn't set bail on
17 any of these defendants. I guess I did with Ms. Cibik --

18 MS. ECHENBERG: Right.

19 MR. PASTORE: Right.

20 THE COURT: -- but I don't think I set bail for
21 Mr. Brodjik. But it's possible I did.

22 Could you tell me what his bail conditions are now.
23 Does anyone know?

24 MR. PASTORE: I apologize for not knowing, your Honor.
25 I believe they are relatively minimal conditions, but I don't

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Verdict

1 want to misspeak.

2 THE COURT: Let me ask you another question, maybe you
3 know the answer to this one.

4 MR. PASTORE: Sorry.

5 THE COURT: What are the guidelines that Mr. Brodjik
6 faces in light of these convictions?

7 MR. PASTORE: The guidelines are, I believe, in the
8 three-year range for the crime.

9 THE COURT: Okay.

10 MR. PASTORE: It's over 100 documents, the government
11 would certainly be alleging --

12 THE COURT: Does the personal naturalization count
13 have any impact on the guidelines calculation?

14 MR. PASTORE: It may. We have to basically see. If
15 it's going to add, about a half unit. It won't be drastic if
16 it is grouped, which it very well may be, won't have any
17 effect -- at most, one offense level difference.

18 THE COURT: Okay. All right. So speak to your
19 application.

20 MR. PASTORE: So with respect to Mr. Brodjik, as your
21 Honor points out, he has now been convicted of false statements
22 in his own naturalization application. Accordingly, he faces
23 mandatory deportation.

24 His green card is likely -- well, his green card will
25 be revoked, that's our understanding. I understand he has a

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Verdict

1 family here, and I understand that his wife is here. But as
2 your Honor has heard, there has been a great deal of testimony
3 that his wife's application is also based on fraud. And that's
4 certainly something that can be considered by immigration
5 courts. And so for all intent and purposes the Brodjiks' life
6 here in America is essentially over.

7 Mr. Brodjik maintains strong ties to Isreal. And in
8 fact, the Court saw in government's 3031-8 an e-mail from
9 Mr. Brodjik from May 2006 in which he talked about selling his
10 house and moving back to Isreal. Obviously, he didn't do that.
11 And obviously, he has shown up. But the burden is now on him,
12 not just the presumption, but the burden to demonstrate by
13 clear and convincing evidence that he -- so the burden is now
14 on Mr. Brodjik to demonstrate by clear and convincing evidence
15 that he is not a risk of flight. We don't believe he can do
16 that. He obviously invested a lot of time, resources, and
17 efforts in attempting to naturalize here as a United States
18 citizen. He was not able to do that. And because he was not
19 able to do that, he is now faced with the prospect of remaining
20 here for a period of likely incarceration, followed by
21 deportation, or to self deport. And so I think the family ties
22 become substantially less significant when he knows that he is
23 going to, in all likelihood, be in prison and then immediately
24 go into deportation proceedings. And so he is not going to see
25 his family for, depending obviously on the Court's sentence, a

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Verdict

1 number of years. So there is powerful incentive to self
2 deport. And it's not just something that is possible, but
3 something that he has specifically, himself, contemplated in
4 the past.

5 His current employment is that he runs a business,
6 Nini Eyewear. And our understanding of that business is he has
7 contacts in Isreal that provide him with an inventory of
8 eyeglasses, among other things, also demonstrating his strong
9 ties to Isreal. So here, that's not just a hypothetical he may
10 go somewhere. There is a specific country, there is a specific
11 risk that the defendant himself contemplated the last time that
12 things sort of got difficult for him.

13 As your Honor knows, he came in and proffered with the
14 government. The reason, or one of the reasons that was
15 ultimately charged is when it came time to plead guilty, he
16 vanished, we couldn't reach him, we were unable to find him.
17 And then we ultimately charged him. I think that is another
18 factor that weighs in favor of detention in this case.
19 Particularly because the burden is on him to establish by clear
20 and convincing evidence that he is not a flight risk. The fact
21 that both him and his wife are -- well him, certainly, he is
22 going to lose his legal status here. His wife may very well
23 loose here legal status here. So the Brodjiks are, like I
24 said, their life in America is essentially over. Given the
25 strong ties to Isreal, given his prior mention of going to

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Verdict

1 Isreal, given his current involvement in a business where he is
2 importing eyewear from Israel, we just don't think he can carry
3 his burden to establish by clear and convincing evidence that
4 he is not a flight risk.

5 MR. HERZOG: Your Honor, Mr. Brodjik is married.
6 Mr. Brodjik has five children. Mr. Brodjik, if he had had good
7 legal counsel, would not have come in and proffered. He didn't
8 disappear anywhere. His wife is very, very ill. And we will
9 be asking the Court at the time of sentencing to give a
10 nonguidelines sentence based on her very, very serious illness.

11 THE COURT: What is her very, very serious illness?

12 MR. HERZOG: She, as I explained to you when we were
13 seeking a delay in the trial, she had a stomach surgery, which
14 was designed to help her lose weight or to reduce her weight.
15 And it went terribly awry. Six months ago, she had to have
16 essentially a complete reconstruction of her gastro GI tract.
17 You may recall that she was taken by hospital to the emergency
18 room on New Year's Day, came all of the way down from Monsey to
19 Mt. Sinai hospital, because it was so serious they thought she
20 had had a stroke. We almost were going to call the Court and
21 ask for permission to Mr. Brodjik to miss today's session
22 because she is in very bad shape today. The youngest of his
23 children is very young. Even if they -- of course, they wanted
24 a life in the United States, I can't deny that. If they can't
25 have it, fine, they'll go back to Isreal. They are both

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Verdict

1 Israelis.

2 THE COURT: Regardless of what sentence he gets, he is
3 going back.

4 MR. HERZOG: We know that. Of course, of course.

5 THE COURT: He has no right to stay.

6 THE JUROR: Of course. And that's that.

7 But the point is, to put him in jail pending sentence,
8 it would be an incredible burden on his family. We
9 respectfully believe we have meritorious issues on appeal.
10 There is actually a lawsuit pending against her first surgeon.
11 And they want to -- they want to be in the United States as
12 long as they can. Obviously they wouldn't be able to be here
13 forever. But it is in their best interest to stay in the
14 United States as long as they can. They have a house to sell.
15 They are not -- they are not going to run off in the middle of
16 the night. He has come every time he is supposed to be here.
17 There is absolutely -- he has done nothing wrong. We know
18 people of his community don't split up families. His family is
19 going to stay together, you know, and together in Isreal.
20 But --

21 THE COURT: Well, I mean --

22 MR. HERZOG: -- as far as the children and the wife
23 and everything --

24 THE COURT: -- but Isreal is an appealing other
25 location. It is not -- it's, in every way, it is an appealing

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Verdict

1 location.

2 MR. HERZOG: You know --

3 THE COURT: They have excellent medical care.

4 THE JUROR: -- they have many, many reasons to stay in
5 the United States pending sentence. She has doctors here. Her
6 care is here. They have a pending lawsuit here.

7 This is we're talking about a three-year guideline.
8 You know, I wouldn't want to be 3 years in prison, but it's not
9 the longest prison sentence your Honor has ever imposed. He
10 has children that need taken care of, being taken care of and
11 his wife is really not in a position to take care of them.
12 She -- I mean she does the best she can, but she is very, very
13 badly constrained from taking care of those children. And she
14 needs Mr. Brodjik at home. If he has to go the jail at the end
15 of all of this, so be it, but -- but we are going to make what
16 I think will be a very strong case to your Honor for a reduced
17 sentence.

18 You know, we'll see what your Honor -- we'll see what
19 your Honor does with that information, but there is absolutely
20 no reason to remand.

21 THE COURT: Well, the reason is that being deported to
22 Isreal is inevitable. And the issue is why would someone want
23 to spend some time in jail before going to his home country,
24 which is, as I say, is an attractive place. So I think that
25 is --

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Verdict

1 MR. HERZOG: They don't --

2 THE COURT: And the concept that you really think that
3 it's realistic that even if he gets a nonguidelines sentence --
4 and I -- that he will get zero jail time --

5 MR. HERZOG: I didn't say that. I didn't say that,
6 Judge. And the point is, that as Mr. Pastore said, they want
7 to stay in the United States, their life is better in the
8 United States. If he has to do a year, or two, or even three
9 in jail, so be it. But it would be better for his family to be
10 in the United States. He is -- his wife is not gonna -- he is
11 not going to desert his family, he is a Hasidic Jew, he is not
12 going to go to Isreal and leave his family here in the United
13 States. That's just not going to happen, not in a million
14 years. And they have a house to sell. It is the middle of the
15 school term.

16 I mean, basically, I don't know what you think of
17 Mr. Brodjik, but Mr. Brodjik is a -- a family man. I mean he
18 is -- he may, or may not, have done something stupid with Earl
19 David, but that's not really -- I mean even your Honor knows --
20 I don't want to start arguing sentence now, but Mr. Brodjik was
21 the lowest cog in a very low-cogged operation. And, you know,
22 when you compare him to Sam Salamon or David Grynshztajn and all
23 of these other people, I mean he is a schlepper. And, you
24 know, so -- so there is there is just no reason. He is not
25 gonna abandon his family so that he can -- to avoid 3 years in

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Verdict

1 prison. It's just not that long of a sentence. I mean it if
2 it was a 20-year sentence --

3 THE COURT: Despite the evidence adduced against him,
4 despite his proffer statement, he didn't choose to plead. So
5 that might give you a clue as to his view about going to jail.

6 MR. HERZOG: No. In fact, your Honor, quite the
7 opposite. We told him, and I am sure he will give me
8 permission to tell you this attorney/client conversation. We
9 told him that if he pled guilty, he was much less likely to get
10 a jail sentence from your Honor. And he -- in fact,
11 Mr. Pastore told him, in front of me, that he was much less
12 likely to get a jail sentence from your Honor if he pled guilty
13 than if he went to trial. He asked me what I would do. I said
14 I couldn't go to jail. I, personally, Lawrence Gerzog,
15 couldn't go to jail. He said I could go to jail if I have to.
16 He is not gonna flee.

17 THE COURT: Well what, other than his word, which
18 isn't, after this conviction, worth very much, what are you
19 offering beyond his word.

20 MR. HERZOG: I mean I can offer you what he has. He
21 has a house. He has -- you can give him house arrest, if you
22 think that's appropriate. You know, obviously, he has already
23 got travel limitations.

24 THE COURT: Well, what is the extradition treaty
25 between the United States and Isreal, if any; do we know?

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Verdict

1 MR. PASTORE: I don't believe there is one. I don't,
2 I'm not 100 percent sure of that, but --

3 MR. HERZOG: There definitely is one. To be
4 completely candid, I don't know whether it covers fraud. I
5 know it covers crimes of violence, for example. And I know
6 that as a fact.

7 MR. PASTORE: If I may with respect to your Honor's
8 first question, currently, the bail is simply 250,000-dollar
9 personal recognizance bond cosigned by two individuals.

10 The other fact that I wanted to raise, Mr. Gerzog has
11 mentioned what kind of man is Mr. Brodjik.

12 I mean Mr. Brodjik aided, essentially aided and
13 abetted Mr. David when he fled. We saw the e-mail in which
14 Mr. Brodjik drove a car to Canada, spent an hour under
15 investigation as he said for Earl David's -- and then helped
16 Earl David set up a remote office. And I read that he e-mail,
17 part of that e-mail, during my closing. It was my idea to help
18 you set up remotely, is essentially what he said. So that you
19 can operate remotely. I know I'm not getting the words exactly
20 right.

21 But the fact that not only does he engage in this
22 fraud, not only when sort of everything is coming down does he
23 say, oh, oh, time to scoot to Isreal. But when someone does
24 run away, what does he do? He helps him run away. He enables
25 them to evade detection by law enforcement by driving a car

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Verdict

1 over the border, leaving his family apparently, driving a car
2 over the border, and giving it to Earl David, and then helping
3 him to set up to enable him to remotely control the fraud.
4 That is -- that is -- that says something I think about his
5 respect for law enforcement and his willingness to help others
6 from being captured by --

7 MR. HERZOG: First of all, Earl David was under no
8 Court order to stay in the United States.

9 Second of all, we know that Refael Brodjik was his
10 adopted nephew.

11 Third of all, Sam Salamon is lying through his teeth
12 when he said that Mr. Brodjik helped Mr. David move. He did go
13 to Toronto, to be sure. But he did not help Mr. Dazed move.

14 And when we talk about this -- you know, I was gonna
15 say this to the jury, except I couldn't figure out how. He
16 helped set up the network operation so they could communicate.
17 This is not the CIA. What did he do, plug in a fax machine and
18 plug in a computer? That's all you have to do to communicate
19 between Toronto and United States. This is an not encrypted
20 spy software. There is nothing to be done. Anyway, maybe he
21 did it. Maybe Earl David asked him to do it. Maybe he and
22 Earl David like each other, and Earl David asked him to do that
23 favor, and maybe he shouldn't have done that. But if Earl --
24 if he saw Earl David running away, and if David Grynsztajn told
25 him in January of '06 that he was cooperating with the

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Verdict

1 government, and if his house was searched in '09 and if he made
2 a proffer when he did, he had to know there was a pretty darn
3 good chance of his getting convicted and going to jail.

4 And yet he stayed, and yet he fired a free lawyer, and
5 went around hat in hand to his community. He doesn't have any
6 money. He went around hat in hand begging for money from his
7 community, so that he could hire me and Mr. Gutman to do this
8 trial for him.

9 You know, if he was gonna flee, he would have fled a
10 long time ago. He is not gonna flee. He is not going to
11 abandon his family. His kids are in school. His wife is sick.
12 He would -- he -- it is incomprehensible that he would go
13 anywhere. He -- he --

14 THE COURT: Why can't they all go?

15 MR. HERZOG: Because his wife is sick. His kids are
16 in school. They own a home. They have to -- the time, as much
17 as no one wants to be in jail. But the time is in their best
18 interest. They will sell their house. She will continue to
19 get care. Hopefully her care will make her better enough to be
20 fully in a position to take care of her family if you sent her
21 husband to jail.

22 You know, with all due respect to my brothers in
23 Isreal, and with all due respect to the fact that they have
24 good medical care there, they do not have the same kind of
25 medical care that we have in the United States and especially

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Verdict

1 not in New York City. They just don't. And they don't know
2 her case. They have not been working with her for months. And
3 so there is -- there is no --

4 THE COURT: Do you know the number of patents,
5 biomedical patents, that Hebrew University gets? It is
6 outstanding. The Hadassah Hospital is outstanding. I'm sorry,
7 you can pull this on somebody else, but you're not pulling it
8 on me.

9 MR. HERZOG: If you were sick, you would not go to
10 Tel Aviv.

11 THE COURT: I am not a religious Jew who has an
12 affiliation. I am not Israeli, I'm an American.

13 MR. HERZOG: Right.

14 THE COURT: Period.

15 MR. HERZOG: People don't travel. No one travels from
16 New York to Isreal to get medical care. Lots of people travel
17 from Israel to New York to get medical care, okay. That's just
18 a fact. I'm not putting down the Israeli medical system.

19 THE COURT: Be careful.

20 MR. HERZOG: I'm not saying the Israeli medical system
21 isn't probably the second best medical system in the country --
22 in the world, I know that. I'm not saying it is Jamaica or
23 some third world undeveloped country. But we all know that the
24 United States has the best care. Her doctors are here. The
25 people who have been -- the people who took care of her, who

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Verdict

1 operated on her, are at Mt. Sinai Hospital. She wants to get
2 better at Ms. Sinai Hospital. And Mr. Brodjik wants to be by
3 her side as she gets better. Not in Isreal. He is going to
4 stay. And if he has to go the jail to do it, then he'll go to
5 jail. He told me so himself. He had no reason -- he had no
6 reason to lie to me. Maybe he has a reason to lie to you,
7 Judge --

8 THE COURT: He can repeat it to me.

9 MR. HERZOG: -- but he has no reason to lie to me.

10 MR. PASTORE: Judge, if we also put this in context,
11 Mr. Brodjik proffers in 2009. He then files a naturalization
12 application claiming he has never committed a crime. He then
13 proffers again with the United States government. So he
14 proffers once, files a naturalization application saying, yep,
15 no crimes, no problem. They then -- then he proffers again
16 with the United States government, and goes into a
17 naturalization interview after that and lies again.

18 So I think your Honor hit the nail on head. What is
19 different now, is that it's clear to him he is not going to get
20 away with it, that he has been caught to be admitting on the
21 one hand in a proffer that you have committed immigration
22 fraud, and then to walk into 26 Federal Plaza and say, no, I
23 have never committed a crime for which I have not been
24 arrested, face to face with a United States immigration
25 official? I just don't trust anything Mr. Brodjik says. He

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Verdict

1 has a powerful incentive to flee. The community, as your Honor
2 has pointed out can take care of his children. It's very easy
3 for him to flee and have the family meet him there. I just
4 don't think, given that the burden is now clear and convincing
5 evidence, and it's on him, I just don't think he can meet that
6 burden.

7 MR. HERZOG: There is no reason to think that
8 Mr. Brodjik -- it's one thing to go hat in hand saying can I
9 please have some money to pay some lawyers for my trial. It is
10 another to say, will you please see my wife through an illness
11 which almost killed her, will you please take care of my
12 children, who are, some of whom are very young and in total
13 need of parental care, not community care.

14 I don't care how wonderful his community is, or isn't.
15 I don't care whether Hillary Clinton thinks it takes a village
16 to raise as family, it takes a father and a mother to raise a
17 family. And Refael Brodjik knows that. and he if he is gong to
18 have to go to jail for some period of time in the future to pay
19 for this crime, then so be it. That's what he is gonna have to
20 do. But for now, his family needs him home. His family needs
21 him to help take care of the family. His family needs him to
22 help get his wife better. He has not missed a day of court.
23 There has not been any situation -- what Mr. -- I'm sorry,
24 I'm -- Pastore is telling you is because he got convicted he
25 should be remanded.

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Verdict

1 We know he committed a crime, okay. We know he went
2 in there and said to the guy, you know, I have never been
3 convicted of any crime. Frankly, honestly, just between you
4 and me, Judge, has anybody ever checked yes on that box? But
5 that's not the point. The point is that that is not an excuse
6 for him to have checked no. But I mean, come on, you know, why
7 go in to the interview and check yes on that box. If you are
8 going to check yes on that box, just don't apply.

9 THE COURT: But there is a little higher level of
10 chutzpah to have proffered and then go and deny that you have
11 committed a crime. That just -- I agree with you, that's
12 unlikely that most people would admit to having committed a
13 crime for which they have not been arrested when it was obvious
14 that that would result in the denial of their application. But
15 this --

16 MR. HERZOG: And probably deportation.

17 THE COURT: Right. But this is -- well, yes and no.
18 This is a slightly higher level OF arrogance.

19 MR. HERZOG: He may be arrogant, Judge. It may be
20 Chutzpah, it may be stupid as hell. He didn't ask me whether
21 he should do it, I was not his lawyer then. If he had asked me
22 do you think it's good idea, having proffered to the government
23 to go apply for my citizenship, I would have given him
24 different advice than he apparently got.

25 THE COURT: Well, I wonder if he got any advice, but

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Verdict

1 be that as it may.

2 MR. HERZOG: He actually did get advice, but I'm sure
3 he didn't tell the people he got advice from that whole story.

4 THE COURT: You can't give advice unless you have full
5 disclosure of the facts so.

6 MR. HERZOG: If you want to put him on house arrest,
7 Judge --

8 THE COURT: Let me. I guess, Mr. Pastore, the
9 question is, if Mr. Brodjik was on house arrest with electronic
10 monitoring, and we have an extremely high level of telephonic
11 reporting, and we had Mr. Brodjik's passport, and we made sure
12 that his counsel got an assurance from the Israeli consulate
13 that they would not grant him a replacement passport,
14 realistically, how does he get out of the country in the few
15 months before he is sentenced?

16 MR. HERZOG: And Judge --

17 THE COURT: I'm not interested in taking his word.

18 MR. HERZOG: Keep in mind -- let's be fair. He is
19 not -- you know, this is not -- he is not a member of some, you
20 know, guerilla organization with a network that is gonna
21 smuggle him out. I mean, you know, he is not that kind of
22 criminal. He committed a crime, okay. But he is not that kind
23 of criminal that -- that, you know, deviously knows where to
24 obtain a false passport and all this kind of stuff. I mean he
25 is no more that kind of criminal, frankly, than Mr. Gutman or I

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Verdict

1 am. I would never know --

2 THE COURT: I wouldn't involve Mr. Gutman.

3 MR. GUTMAN: Thank you very much, Judge.

4 MR. HERZOG: I wouldn't know where to get a false
5 passport. I wouldn't know how to flee the United States and,
6 frankly, neither does Mr. Brodjik.

7 THE COURT: I wouldn't trust the Israelis to recognize
8 a false passport, okay. So, the issue is, he is an Israeli
9 citizen. And as an Israeli citizen, he can go to the, you know
10 to his consulate say I have lost my passport and seek a new
11 one. I have to bring that possibility to an end, because this
12 is not someone -- this is not an American citizen where the
13 U.S. Attorney's Office can communicate with the State
14 Department and the passport office and take care of that.

15 MR. HERZOG: We will write a letter in the most -- you
16 know, your Honor can write a letter to add to it, that --

17 THE COURT: I want their agreement that they wouldn't
18 do it.

19 MR. HERZOG: I have not spoken to them, but I assume
20 they would give that, why wouldn't they?

21 THE COURT: I don't know. I mean I -- in other
22 words --

23 MR. HERZOG: I mean we can put in the letter that
24 Mr. Brodjik will waive whatever rights he might otherwise have.
25 You know, he will waive them in writing. He will say, you

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Verdict

1 know, I don't -- you may not issue me a passport.

2 THE COURT: So we lock him down in his house with
3 electronic monitoring, and figure out a way to keep him from
4 getting -- you know, we get his current passport.

5 MR. HERZOG: Which I assume they have already.

6 THE COURT: Do you have his passport?

7 MS. ECHENBERG: We should. Pretrial should have it.
8 And we'll confirm that.

9 THE COURT: Okay. And we prevent him from getting
10 another one, you know. I mean if it would be a -- if there
11 was, you know, repeated monitoring of his bracelet, and I think
12 his bracelet also, I assume, has a locator, right. It's pretty
13 hard to really get out of the country that fast. In other
14 words, once -- let's say he decided he wanted to go via Canada,
15 it takes time. I think that we could divine a mechanism to
16 keep him here. As I say, it's not based on his word but based
17 on, you know, measurable restraints.

18 MR. PASTORE: Provided, you know -- that sounds
19 reasonable. Provided of course that he would be remanded until
20 those conditions are put in place. I believe it takes a couple
21 of days to confirm there is a land line. And given that this
22 is electronic monitoring, the bracelet is not the standard one.
23 In other words, there is a GPS locator. My understanding,
24 based on my experience, is that could, especially if your Honor
25 were to order it today, could potentially be done by the end of

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Verdict

1 the week. So if he was remanded for that short time period
2 while we put those conditions in place, including the
3 communication with the consulate, make sure they sign off, and
4 also confirm that there have not been any new passports issued
5 to, frankly, to him or his family members. I think another
6 concern is that if the family is relocated, then there is
7 really no reason to stay. I think that's the argument, is that
8 the family is what's keeping him here, and his wife is what's
9 keeping him here. And so we want some assurances that his
10 family members are not sort of --

11 MR. HERZOG: Your Honor, his family can't relocate.
12 His wife was in the emergency room on New Year's Day. She came
13 by ambulance from Monsey to Mt. Sinai Hospital. She couldn't
14 relocate if you gave her \$10 million, if her life depended on
15 it, because her life depends on it.

16 MR. PASTORE: Then there shouldn't be any problem with
17 turning in the passports of the family members.

18 MR. HERZOG: I have no problem with that. Three of
19 his children are U.S. citizens. But to put him in jail for two
20 or three days while we set this up, I think, respectfully,
21 is punitive and unnecessary. And you know for anyone to think
22 that a family of five is gonna just pack up and disappear in
23 two days, especially a family man, a normal, you know,
24 citizen -- who committed a crime, okay, but, not a crime of
25 violence, not a crime -- not a drug crime, not a crime where

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Verdict

1 he -- where he stole widows' and orphans' money. I mean he was
2 not involved in the actual immigration fraud. The only thing
3 he is accused of is transferring the money --

4 THE COURT: I don't need to give you a lecture on the
5 law of conspiracy, do I?

6 MR. HERZOG: No, but you know what I mean, Judge. He
7 didn't fill out any applications.

8 THE COURT: So what?

9 MR. HERZOG: He collected money. So he is the bottom
10 of the totem pole, is what I'm trying to say. It's not -- if
11 we are talking about veniality, if we are talking about -- you
12 know, look at Sam Salamon and tell me that --

13 THE COURT: It's like saying that the guy at the top
14 of the pyramid who gets the benefit of all of the worker bees
15 is, you know, the bottom of the totem? No, he, you know --

16 MR. HERZOG: The guy at the top is more venial than
17 the guy at the bottom, yes.

18 MR. PASTORE: It's this dangerous reasoning that for a
19 short period of time while we agreeing to these conditions and
20 while we get these conditions in place, we think it's
21 appropriate, especially this is the kind of reasoning, frankly,
22 that concerns us. The idea that he was some minor participant,
23 that he didn't go to Canada and he didn't aid and abet Earl
24 David. He played a very, very significant role. He says it
25 himself.

D250cib2

Verdict

1 MR. HERZOG: Look, I -- I mean we'll argue his role at
2 sentencing, Judge. You know, we have time for that. But to --
3 for Mr. Pastore to actually get up and stand up on his two hind
4 legs and tell you that he --

5 THE COURT: He doesn't have hind legs; only two legs.

6 MR. HERZOG: Rumpole reference, your Honor, and say
7 that, you know, Refael Brodjik is some kind of criminal
8 mastermind is beyond absurd.

9 THE COURT: He didn't say that.

10 MR. HERZOG: That's what he implied.

11 THE COURT: No, I don't think that is what he implied.
12 I think what he said was he was up to his eyeballs in the
13 criminal activity.

14 Is Mr. Brodjik's pretrial officer in White Plains?

15 MR. HERZOG: Yes, apparently.

16 THE COURT: What's the officer's name?

17 MR. HERZOG: Vincent Adams.

18 And if you want, Judge, he can sit from nine to five
19 in the lobby of the White Plains Pretrial Office until things
20 are put in place if you think. You know, I mean he would sit
21 there 24 hours if he -- I mean it's just --

22 THE COURT: Mr. Brodjik have a land line in his house?

23 MR. HERZOG: Yes.

24 THE COURT: And what's the phone number, please.

25 MR. HERZOG: (845) 354-0630.

D250cib2

Verdict

1 THE COURT: Bail is set as follows: On top of the
2 existing bail conditions, by the end of Thursday, there will be
3 a monitoring bracelet with GPS in place.

4 Mr. Brodjik will be on home detention.

5 And the government will have received assurance in
6 writing from the Israeli Embassy that no new passports have
7 been issued to Mr. Brodjik.

8 MR. HERZOG: Can I just ask, your Honor, did you mean
9 embassy or consulate?

10 THE COURT: Whatever the appropriate.

11 MR. HERZOG: Embassy is in Washington, consulate is in
12 New York.

13 THE COURT: Anyone speaking to the Israeli government.

14 The consulate should say that no new passports have
15 been issued to Mr. Brodjik. And that they will not issue new
16 passports to him or any family member.

17 That by tomorrow, the end of tomorrow, all current
18 passports of family members are to be delivered to pretrial
19 services. That Mr. Brodjik will call pretrial services every
20 three hours, except during the middle of the night, from his
21 land line.

22 MR. HERZOG: Can we just, so there is no confusion,
23 would you mind specifying from what hour to what hour you would
24 like him to call so that -- to make sure he complies?

25 THE COURT: All right. Well, 8:00 in the morning to

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Verdict

1 11:00 at night.

2 MR. HERZOG: Okay.

3 THE COURT: And he is to make that call from his home
4 land line, unless he has been excused to go with his lawyer to
5 the Israeli Consulate to do what he needs to do to achieve
6 letter assurance.

7 MR. HERZOG: Right.

8 THE COURT: Okay? Okay.

9 MR. HERZOG: And that excusal may come from his
10 pretrial services officer to go to the embassy, or does your
11 Honor want to --

12 THE COURT: Or I mean I could excuse him, as well.

13 MR. HERZOG: Whichever, your Honor.

14 THE COURT: His pretrial officer will need to know
15 that that is what's going on.

16 MR. HERZOG: I want to make sure that we're in strict
17 compliance.

18 THE COURT: But then he can't call from his home
19 phone.

20 MR. PASTORE: Judge --

21 MR. HERZOG: I just want to make sure we are in strict
22 compliance with your Honor's order. I don't want there to be
23 any --

24 THE COURT: His pretrial officer will need to know
25 that he has my permission to go, with his lawyer, to the

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Verdict

1 Israeli consulate, if that is what is necessary to obtain the
2 letter assurance that is part of his bail. And I wouldn't be
3 shocked if they would like to see him in person.

4 MR. HERZOG: I understand.

5 MR. PASTORE: Can we just ensure that the number will
6 be unblocked? I know a lot of folks nowadays have blocking
7 features on their home phone number. In other words, it will
8 come up as a blocked number.

9 MR. HERZOG: It is currently not blocked.

10 MR. GUTMAN: The Court can issue an order.

11 MR. HERZOG: His service is Verizon. The Court can
12 issue an order, if that's what you want to do.

13 MR. PASTORE: There is a way to unblock it just by
14 dialing a few digits.

15 THE COURT: That's apparently not blocked. It will
16 remain unblocked.

17 MR. HERZOG: Not blocked.

18 THE COURT: It will not achieve anything if he calls
19 the pretrial officer from another number, or a blocked number.

20 MR. HERZOG: Right.

21 THE COURT: Okay. And I think you mentioned
22 Ms. Cibik.

23 MR. PASTORE: Yes, your Honor. With respect to --

24 MR. GUTMAN: I'm sorry, your Honor. Could I address
25 this, just out of caution.

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Verdict

1 The only part of this that is not really in our
2 control is the setting up of the electronic monitoring. Just
3 in the event -- I'm sure that, you know, efforts will be made
4 to expedite that process. But if for some reason, through no
5 fault of our own, it takes an extra day or two, some amount of
6 time for pretrial to do that.

7 THE COURT: I think it will get communicated both by
8 me and by, you know, the U.S. Attorney's Office that this is
9 something that has to happen.

10 MR. GUTMAN: I understand.

11 THE COURT: What I have said, has to happen.

12 MR. PASTORE: Yes, your Honor.

13 With respect to Mrs. Cibik. First, the current bail
14 conditions are as follows: \$50,000 personal recognizance bond
15 cosigned by one individual.

16 The defendant has surrendered all travel documents.
17 She's under strict pretrial supervision with a curfew in
18 residence from 11:30 p.m. to 11:30 a.m. And she's subject to
19 random voice verification from 11:30 p.m. to 11:30 a.m. She
20 reports in -- was required the report in in person until a land
21 line was installed. I understand that a land line -- well, I
22 actually don't have an understanding, I should say, about
23 whether the land line has been installed or not.

24 With respect to Ms. Cibik, the government has
25 consistently held or argued for detention largely based on her

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Verdict

1 prior flight. Your Honor, knows there was some discussion of
2 flight. We ultimately didn't introduce it at trial, but we did
3 go back to the record, the tax records, the travel records.
4 What they reveal is that on -- well, on May 9 the defendant was
5 served with a grand jury subpoena. On May 11, she left the
6 United States for Canada. She, at some point, went abroad to
7 Turkey. And travel records show that she didn't return to the
8 United States until August, when she took a flight back from
9 Turkey. She acknowledged this in her proffer with the
10 government. And the travel records confirm that she left just
11 two days after being visited by agents. We didn't introduce
12 this at trial, in part, because we don't know the timing of
13 when Ms. Cibik bought the ticket. And because, ultimately,
14 obviously, she came back.

15 The situation now is different. She is a legal
16 permanent resident. She is likely to be deported. She
17 maintains substantial ties with Turkey. She previously fled
18 there. And in her bank record there is at least one other trip
19 to Istanbul. And so given her prior flight, given her ties to
20 Turkey and given, really, I don't know of any family ties. But
21 maybe Mr. Donaldson can speak to that. I don't know of any
22 family ties that would keep her in the New York area.

23 In that respect, she seems to be differently situated
24 than Defendant Brodjik.

25 THE COURT: Mr. Donaldson.

D250cib2

Verdict

1 MR. DONALDSON: Your Honor, I actually believe that
2 the current bail conditions, as set are, or were, strict enough
3 to maintain her appearance in the jurisdiction.

4 The bail conditions were I think altered throughout
5 the course of Mrs. Cibik's case. I believe at one point
6 because of her consistent lack of issue with pretrial, I
7 believe it was modified.

8 She does not -- I don't believe -- she does have
9 family or significant family in the jurisdiction, but I don't
10 think that is the -- should be the standard. I believe that if
11 we had to go to the home detention aspect, I think that would
12 be sufficient. But I honestly don't believe that the
13 conditions currently set are not sufficient to make sure she
14 does not leave the jurisdiction. A lot of what my colleague
15 said was also true regarding Ms. Cibik in pretrial matters, the
16 offers and things like that regarding the communication with
17 the government, actually very similar. So I don't believe the
18 conviction, in and of itself, is the -- would be the motivating
19 factor for her to leave.

20 I think the curfew is fine. She works every day, has
21 been working every day since 2006. She has not had any arrests
22 or any criminal contact or anything of the sort since May of
23 2006. She came back in June. She had a trip prior to
24 receiving the grand jury subpoena. So there is actually not a
25 significant flight risk involved with Ms. Cibik besides the

D250cib2

Verdict

1 conviction. I mean it's clear that poses some, but I believe
2 that when the person comes to Court, particularly a federal
3 court, there is always that -- I don't want to say possibility,
4 but probably probability of some type of verdict against you.
5 Again, she still came to my office throughout her release, I
6 would say at least 25, 30 times, minimum. So she's consistent
7 with that.

8 She has not had any incident since she was released.
9 She has worked every day. She works now. She leaves Court
10 every day during trial, goes to work and calls me from work.

11 So she, in my opinion, is a responsible person,
12 notwithstanding what happened in 2004 through 2006, which was
13 several years ago.

14 So I humbly believe that some bail conditions can be
15 set. I really do not believe that home detention is necessary.
16 But if that's what the Court feels is appropriate, then we
17 won't object to that. The only issue with that is that she
18 doesn't have a land line right now.

19 So we request to put her in pending that happening.
20 You know, I'm not happy, because she'll be in. So if the Court
21 is leaning towards home detention, we would not object to that,
22 but would ask time to get that land line to be put in place.

23 Again, she has been on the significant 11:30 to 11:30
24 time period for the last almost 15 or 16 months. She has not
25 traveled. She surrendered all travel documents. She has not

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Verdict

1 gone anywhere. It is not a violent case, as my colleague
2 indicated, not a drug case as my colleague indicated. She's
3 not a very sophisticated woman, as is clearly indicated. So I
4 do not believe flight is a significant issue. But again, we
5 wouldn't object to some type of home detention if that is what
6 the Court is thinking.

7 MR. PASTORE: And Judge, just on this record, the
8 defendant failed to appear for grand jury subpoena, after
9 confessing to her crime, and cleaned out her bank account and
10 disappears. I'm sorry, August was when she got in touch with
11 the -- the agents again. June is when she came back. She got
12 in touch with the agents.

13 THE COURT: Right.

14 MR. PASTORE: We just can't agree that she has met her
15 burden by clear and convincing evidence that she is not a risk
16 of flight.

17 THE COURT: She left and came back within a month,
18 right?

19 MR. PASTORE: Yeah. So cleaning out her bank account
20 and failing to appear for a grand jury subpoena, that concerns
21 us and that makes us believe that we can't agree that she has
22 met her burden by clear and convincing evidence to stay out.

23 THE COURT: Mr. Donaldson, what hours does Ms. Cibik
24 work?

25 MR. DONALDSON: She talking to me. When she talks to

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Verdict

1 me, I talk back.

2 (Pause)

3 Before the trial started, it was 8:00 to 2:00 p.m.
4 8:00 a.m. to 2:00 p.m. Like that for quite sometime. After
5 trial started, they switched the schedule to 3:00 to 10:00.

6 THE COURT: So how has she been on her curfew?

7 MR. DONALDSON: I think that's been relaxed.

8 THE COURT: I think there was a change, I don't
9 remember.

10 MR. DONALDSON: We came back here several months ago
11 because of her work hours shifting so much. Prior to -- prior
12 to that, she had been on telephone curfew for whatever hours it
13 was. But we came back because of her work schedule. She was
14 working from 8:00 to 6:00 or sometimes from 6:00 to whatever it
15 was. So we modified that. But I don't -- she never violated,
16 of course. But I know we came back to Court and modified it
17 because of her work schedule.

18 And, again, the work schedule was something that she
19 worked -- she has really been working every day for the last, I
20 believe, six, seven years. So I don't know exactly what her --
21 I don't believe she has a curfew. I don't believe she has a
22 curfew, honestly. I know at some point in time it was 11:00 to
23 11:00 like Mr. Pastore said. But I really believe it was
24 modified about six or seven months ago. I think. I'm not
25 certain of the exact date. I think.

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Verdict

1 Judge, one further thing I forgot to add. She still
2 does visit pretrial services twice a week, Tuesday and
3 Thursday. And she's been doing that since the case began, so
4 that's another reason why I'm suggesting that she has been
5 particularly responsible.

6 THE COURT: All right. With respect to Ms. Cibik, I'm
7 gonna place her on electronic monitoring with a curfew from
8 10:00 p.m. to 6:00 a.m. That does require to obtain a land
9 line.

10 I also want to add to her conditions that she send a
11 letter, obviously to be drafted by Mr. Donaldson, to the
12 Turkish embassy or consulate, explaining the current legal
13 situation, and waiving any right she might have to obtain a new
14 or replacement passport, except in the context of a deportation
15 proceeding.

16 And as far as in-person reporting to her pretrial,
17 it's up to pretrial. If they want to continue what she's
18 doing. Now, they may conclude that electronic monitoring is
19 sufficient.

20 Ms. Cibik, Mr. Donaldson, what is that name of
21 Mrs. Cibik's pretrial officer?

22 MR. DONALDSON: Mildred Santana.

23 THE COURT: Okay, sure.

24 Mr. Pastore.

25 MR. PASTORE: Yes, Judge.

D250cib2

Verdict

1 In terms of the date for the letter to be sent for the
2 electronic monitoring.

3 THE COURT: Fair enough. Electronic monitoring by the
4 end of the week, I think that's sufficient. And the letter,
5 likewise.

6 MR. PASTORE: Just to clarify, does the Court have any
7 objection to us reaching out the either of the pretrial
8 services officers to make sure they are aware.

9 THE COURT: No, that will save me the effort.

10 MR. PASTORE: Well, to the extent the Court wants to
11 add its voice, I'm sure that carries more weight.

12 THE COURT: When I go back, I'll -- if I reach them,
13 I'll try to do so, all right.

14 I think we need a sentencing date.

15 And I guess with everyone out, we're supposed to leave
16 120 days.

17 Sentence is set for June 5 for everybody. Sentencing
18 June 5, 2:00, everybody.

19 Okay I'll ask the question once again.

20 Anything else.

21 Mr. Schwartz.

22 MR. BRILL: The Court, I believe knows this already.
23 Mr. Brill in Florida, he's under pretrial supervision in
24 Florida. I'm not sure how that works in terms of the probation
25 investigation. But I just wanted that to be clear for the

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Verdict

1 record that he is gonna be returning to Florida, continuing in
2 the current conditions unless we change those conditions as to
3 what Mr. Pastore mentioned.

4 THE COURT: Well, I think he can come back here for
5 his interview.

6 MR. BRILL: I assume that's right. He'll obviously
7 comply with it.

8 THE COURT: Okay. Anything else?

9 MR. PASTORE: Just --

10 THE COURT: That's right. We should have submission
11 dates for the sentence, just a moment.

12 I would like the defendant's submissions by
13 May 24th and the government's by May 30th.

14 MR. PASTORE: Judge, just in the interest of clarity
15 is Mr. Brodjik to report to pretrial services, or I guess when
16 does the call every three hours, when should that begin?

17 THE COURT: Commence?

18 MR. PASTORE: Yeah, exactly. This evening at 7:00 or
19 how much time he needs to get home?

20 THE COURT: I think if we -- yeah, I guess maybe this
21 evening at 8:00. So 8:00 and 11:00 will work.

22 MR. PASTORE: And we'll get the appropriate phone
23 number from Mr. Adams, Pretrial Services Officer Adams.

24 THE COURT: Well, he -- do you need Mr. Adams' phone
25 number, we can look that up if he doesn't have it.

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Verdict

1 MR. HERZOG: He doesn't know the number.

2 THE COURT: Okay, we'll just --

3 MR. PASTORE: I guess it's just the after hours, that
4 number.

5 THE COURT: Oh, I don't know what that is.

6 MR. PASTORE: Okay.

7 THE COURT: Yeah.

8 MR. HERZOG: Wouldn't it make more sense, your Honor,
9 for him to call Mr. Adams' answering machine, have Mr. Adams
10 check and make sure he did it. I mean unless do they have a
11 monitored line, a 24-hour monitored line?

12 THE COURT: No, I think it is a recording, but I --
13 I'm not sure. Remind me -- actually, I don't remember. I said
14 until 11:00 at night and what was the beginning time?

15 MR. PASTORE: 8:00 a.m.

16 THE COURT: Well, what I can do is go downstairs and
17 try to reach Mr. Adams. I know I have reached him before.

18 Unless for some reason -- Brett, do you happen to have
19 his phone number on our -- all right. So we can do that, if
20 you will just wait here we can see if we can get you the right
21 phone number to use.

22 (Trial adjourned)

23

24

25